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# South Bend Tribune

January 10, 2001

## Wetlands ruling draws anger, fear

### High court decision may hinder efforts to protect birds

By WAYNE FALDA  
Tribune Staff Writer

Some environmentalists in Indiana and Michigan expressed dismay and anger that the U.S. Supreme Court ultimately may derail protection of wetlands in its ruling Tuesday that limited the Army Corps of Engineers' authority over isolated wetlands via the "so-called migratory bird rule."

Others, including state agencies like the Indiana Department of Environmental Management and the Michigan Department of Environmental Quality, reserved comment on the complex and potentially far-ranging decision, saying they needed time to review it.

"If this ruling is going to apply to all isolated wetlands, including all of the natural wetlands as well as the excavated borrow pits ... this is a tremendous loss for wildlife, because a lot of the isolated wetlands are important breeding habitat for waterfowl and a lot of other wildlife," said Michael Litwin, fisheries biologist with the Bloomington office of the U.S. Fish and Wildlife Service.

The 5-4 court ruling stemmed from a suburban Chicago case in which governmental bodies wished to construct a landfill atop seasonal ponds used by migrating birds.

If the court meant only to restrict its ruling to manmade borrow pits that fill with water, "that would be a much better situation than losing regulatory authority over all isolated waters and wetlands," Litwin added.

IDEM spokesman Russ Grunden said agency attorneys and wetlands specialists met afterward to review the court's decision. "We recognize the potential for broad sweeping changes in the wetland rules," Grunden said.

"The key for us will be to meet with EPA and the Army Corps of Engineers to make a determination as to what all this is going to mean," Grunden said.

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Amanda Hathaway, public relations specialist with the Michigan United Conservation Clubs, and Rae Schnapp, water specialist with the Hoosier Environmental Council, said their organizations would reserve comment because of the complexity of the ruling.

Hathaway said the court's ruling goes against the so-called "commerce clause," giving the government jurisdiction over wetlands, and said the impact of that could be far-ranging.

However, the American Farm Bureau Federation expressed its satisfaction at the court, saying, "The Corps' decision to claim jurisdiction over isolated ponds and wetlands because of a presence of a few migratory birds was clearly an unauthorized, unwarranted expansion of the Clean Water Act--and was beyond congressional intent when it wrote the act."

Writing for the majority, Chief Justice William Rehnquist said Congress did not intend the Clean Water Act to cover such small bodies of water.

In a related report, the U.S. Fish and Wildlife Service reported the nation's destruction of marshes, bogs and other wetlands has been cut by 80 percent over the past decade because of federal laws and conservation programs protecting such areas from developers, farmers and loggers.

National Wildlife Federation legislative representative Julie Sibbing noted that the court ruling "does not say that Congress does not have the authority under the Interstate Commerce clause to regulate isolated wetlands." The five justices "did not strike down that ability. ... Therefore, we can go to Congress and eventually get the Clean Water Act extended to cover these isolated waters."

"What this appears to do directly is to shoot down the migratory bird rule itself," Sibbing said. "The gray area is to figure out if there a way to rewrite the Corps regulation to protect isolated waters, or does this stop that entirely?" she said. "That question none of us has an answer to as of yet."

But Sibbing said the ruling "could potentially affect up to a third of our nation's wetlands."

David Dempsey, policy adviser for the Michigan Environmental Council--a coalition of 23 nonprofit environmental advocacy organizations--called the ruling "absurd," saying the long-range effect will be detrimental to waterfowl.

"Specifically in Michigan, it could be harmful because we have been pressing the EPA to exert pressure on Michigan to protect small isolated wetlands," he said.

The Michigan DEQ, he charged, has been lax in its enforcement of wetlands.

"I am afraid the state DEQ will use this decision as a shield to protect their failure to protect their lack of interest in conserving wetlands," he said.

DEQ spokesman Ken Silfven said the DEQ "needs to sit down and go over (the ruling) and see how broadly this applies."

Michigan and New Jersey are the only two states that are delegated oversight of the federal wetlands program.

"The Corps has no jurisdiction anyway in Michigan," he said, saying the Corps has jurisdiction in Michigan only with regard to coastal wetlands.

Silfven dismissed Dempsey's remarks, saying Dempsey was former Gov. James J. Blanchard's environmental adviser: "There are politics at play here."

*The Associated Press contributed to this report.*

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